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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,156

09/23/2005

Stephane Demellier

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1554

27885

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03/06/2009

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EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

03/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/524,156	<b>Applicant(s)</b> DEMELLIER ET AL.	
	<b>Examiner</b> David J. Walczak	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: As discussed in the previous office action, the terms “detent” (claim 14) and “storing groove” (claim 14) do not have antecedent basis in the specification.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 12 remain rejected under 35 U.S.C. 102(b) as being anticipated by Fuglsang-Madsen (U.S. Re. 27,022).

In regard to claim 1, Fuglsang-Madsen discloses a rotating case comprised of a base 12, 18 mounted for axial rotation around a tubular body 16 (the upper portion of element 18 rotates around body 16) and a slide 10 adapted to receive a lipstick movably mounted in an interior of the body 16 wherein the base includes a means of guidance 36 for inducing the slide to move in axial translation upon axial rotation of the base relative to the tubular body 16 and wherein such axial rotation further induces the slide

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to rotate (when the base is rotated and the tubular body is held stationary, the slide will both rotate and translate axially) and axially translate simultaneously relative to the tubular body and wherein the height of the slide 10 and means for guidance 36 are both less than an external height of the base.

In regard to claim 2, the means of guidance 36 is defined by a rectilinear guiding groove which extends longitudinally along an inside tube (portion 30 of the base defines the inside tube as this tube is positioned inside of portion 18 of the base) which extends concentrically in an interior of the base (interior of element 18) and wherein the groove cooperates in a running relationship to a "first means of guidance" 28.

In regard to claim 3, the slide 10 includes a "means of centering" 28 which contacts the internal surface of the tubular body 16.

In regard to claim 4, the means of centering 28 includes two means (see Figure 2) which are regularly spaced on the exterior surface of an upper end of the slide (see Figure 1).

In regard to claim 5, the means for guidance includes 36 (as discussed above) which receive the means for centering 28 when the slide is retracted into the base.

In regard to claim 6, the means for centering 28 are received in the guiding grooves to guide the slide along the interior of the base.

In regard to claim 7, the means for centering will contact an upper edge of the tubular body (the upper portion of track 45) to limit the travel of the slide.

In regard to claim 8, the first means of guidance 28 has "larger dimensions" than storage grooves 45 that receive the means for centering (i.e., viewing Figure 1, groove

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45 is shallow as compared to the overall length of element 28 and thereby element 28 “has larger dimensions” than element 45).

In regard to claim 12, a cap 20 is attached to an upper end of the tubular body.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Fuglsang-Madsen.

Although the Fuglsang-Madsen reference does not disclose that the tubular body and slide are transparent, the Examiner takes official notice that such dispensers are commonly formed from transparent materials in order to enable a user to view the contents thereof. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the various components of the Fuglsang-Madsen device can be made from a transparent material in order to enable a user to view the contents of the dispenser.

### ***Allowable Subject Matter***

Claims 10, 13 and 14 are allowed.

### ***Response to Arguments***

Applicant's arguments filed on 1/8/09 have been fully considered but they are not persuasive.

The Applicant contends that the Fuglsang-Madsen reference is not applicable in that the portion of base 12 that is inside of sleeve 16 does not contribute to the exterior height of the base and thereby the exterior height of the base is not greater than the height of the slide or means of guidance. However, as the claim calls for "an external height of the base", the entire outer surface of the base defines an external surface/height of the base, regardless of the fact that other elements are surrounding portions of the base. The Applicant seems to argue that since the portion of the base inside of sleeve 16 does not define an exterior surface of the entire device, the base does not include an external surface/height as claimed. However, the claim only calls for "an external height of the base" and does not indicate that the external surface of the base also defines an external surface of the entire device. Accordingly, base 12 includes an external surface having an external height as claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
3/2/09

/David J. Walczak/  
Primary Examiner, Art Unit 3751

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